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GENERAL ASSEMBLY
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ELECTION OF THE JUDGES OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR GENOCIDE AND OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF RWANDA AND RWANDAN CITIZENS RESPONSIBLE FOR GENOCIDE AND OTHER SUCH VIOLATIONS COMMITTED IN THE TERRITORY OF NEIGHBOURING STATES BETWEEN 1 JANUARY AND 31 DECEMBER 1994

SECURITY COUNCIL
Fifty-fourth year

Identical letters dated 17 May 1999 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

The President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994, has requested, for the reasons set out in his attached letter of 14 May, an extension of the term of office of a non-elected judge of the Tribunal in order to allow him to dispose of two ongoing cases. This matter raises institutional and budgetary questions pertaining to the status of a judge beyond his elected term of office and to related financial arrangements.

You may recall that, at the election of judges of the Tribunal by the General Assembly on 3 November 1998, two judges who were currently serving on the Tribunal were not elected to a second term of office, having not been nominated for re-election. This in particular is the situation of one of the judges who currently compose Trial Chamber I sitting in the Rutaganda and Musema cases and whose term of office expires on 24 May 1999. If that judge is not

allowed to complete those cases, it would be necessary to restart both trials with a new panel of judges and order the rehearings of witnesses and testimonies. At this late stage in the proceedings in the cases concerned, such a course of action would unnecessarily prolong the trials and violate the rights of the accused to due process of law.

The Statute of the International Tribunal does not contain a provision similar to article 13, paragraph 3, of the Statute of the International Court of Justice, whereby judges of that Court continue to discharge their duties until they are replaced and, thereafter, until they finish any cases which they may have begun. It is provided in article 12, paragraph 5, of the Statute of the International Tribunal that the terms and conditions of service of judges of the Tribunal shall be those of the judges of the International Court of Justice. However, in the absence of an explicit statutory provision providing for the extension of the term of office of judges of the Tribunal to complete ongoing cases, an approval of the Security Council, as the parent organ of the Tribunal, and of the General Assembly, as the organ which elects its judges, would be desirable in order to preclude any question being raised regarding the legality of such an extension.

As more fully elaborated in the letter addressed to me by the President of the International Tribunal, the period required to complete the Rutaganda and Musema cases is estimated to be eight months. The Registry of the International Tribunal has advised me that the budgetary costs of the extension which is being requested of Judge Aspegren's term of office are estimated to be $261,800. The Registry has also advised me that it is envisaged that the Tribunal may be able to meet those costs from within the 1999 appropriation adopted for the Tribunal by the General Assembly in its resolution 53/213 of 18 December 1998.

In view of the very short time which is available before Judge Aspegren's term of office is due to come to an end, I should greatly appreciate it if you could bring the present letter and its annex to the immediate attention of the members of the General Assembly and of the Security Council for their speedy approval in the manner that they deem fit.

(Signed) Kofi A. ANNAN

Annex

[Original: French]

Letter dated 14 May 1999 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

As you know, the mandate of Judge Aspegren of the International Criminal Tribunal for Rwanda will expire on 24 May, while two cases are still in proceedings before Trial Chamber I, where he sits: the Prosecutor vs. Georges Anderson Rutaganda and Prosecutor vs. Alfred Musema cases.

The Rutaganda case, which began on 18 March 1997, is about to proceed to deliberations. The Prosecutor has completed the presentation of the evidence and only one witness for the defence has still to appear, on 16 June 1999. This case has been adjourned several times owing to the precarious state of health of the accused and the fact that his lawyer, Tiphaine Dixon, has herself been ill, causing an eight-month suspension. The case should now, in any event, move into the deliberation phase by the end of June 1999, following the closing speech by the Prosecutor and the pleading by the Defence, which will take place during the days following the appearance of the last witness.

The Musema case is also coming to an end, since all the witnesses for the Prosecution have already appeared and only five witnesses for the Defence remain to be heard. However, in view, in particular, of obligations undertaken by the defence lawyers, one of whom, Michail Wladimiroff, will apparently be involved in the Lockerbie case, the last witnesses remaining to appear should be heard in the first weeks of September 1999 and the closing speech and pleading will take place immediately afterwards. This case should therefore enter the deliberation phase next September.

The departure of Judge Aspegren upon completion of his mandate on 24 May, at a time when the aforementioned trials have not yet proceeded to deliberations, would oblige us to begin them all over again, a situation which would have unfortunate legal and financial consequences and would surely cause serious prejudice not only to the accused and our legal work, but also to the image of our Tribunal.

Accordingly, in the light of our experience and in view of the fact that the two aforementioned trials are about to proceed to deliberations, it seems to us that it would be more appropriate, in the interest of sound administration of justice, to extend, on an exceptional basis, the mandate of Judge Aspegren in order to enable us to close these two cases and render our verdicts in the months to come.

Allow me, Sir, to draw your attention to the fact that in 1997, following a request by President Antonio Cassesse, the President of the International Criminal Tribunal for the former Yugoslavia, under circumstances similar to those which obtain today, the Security Council authorized an extension of the mandates of three Judges of that Tribunal for a period of 12 months, enabling them to complete a trial and render their judgement.

I therefore request you, Sir, to convey to the President of the Security Council and to the President of the General Assembly a request to extend the mandate of Judge Lennart Aspegren until 30 January 2000 at the latest. I am perfectly aware of the very short period of time for considering our request and ask you to express our apologies in this connection to the distinguished members of the Security Council and the General Assembly.

I have requested Mr. Agwu Okali, our Tribunal's Registrar, to consider and communicate to you as speedily as possible the financial implications of extending the mandate of Judge Aspegren so that you might be able to inform the members of the Security Council and the General Assembly in this regard.

If such an extension is authorized, Sir, Judge Aspegren, Judge Navanethem Pillay and I, who sit in the same Chamber, will clearly make every effort to ensure that the two judgements are rendered as soon as possible and perhaps even before 31 January 2000.

(Signed) Laity KAMA
President